

The Honorable Robert J. Bryan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA

J.W., a minor, through his guardian ad litem,
SALVADOR MUNGIA; S.R., a minor, by
and through his parents, SAMUELU
REUPENA and TAFAOGA REUPENA,

Plaintiffs,

vs.

PIERCE COUNTY, a political sub-division
in the State of Washington; TACOMA
PUBLIC SCHOOLS, a.k.a. Tacoma School
District No. 10; and RANDY DORN,
Superintendent of Public Instruction, in his
official capacity,

Defendants.

CLASS ACTION

No. 3:09-cv-5430-RJB

SETTLEMENT AGREEMENT AND
CONSENT DECREE

This Settlement Agreement and Consent Decree resolves all claims arising out of the class action lawsuit *J.W., et al., v. Pierce County, et al.*, No. 09-05430 RJB, United States District Court for the Western District of Washington at Tacoma, by Plaintiffs (youth under the age of eighteen being held at the Pierce County jail, and their parents and guardians) against Defendants (Pierce County, Tacoma Public Schools, and Superintendent of Public Instruction Randy Dorn) regarding the alleged lack of educational services at the Pierce County Jail. In

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EXHIBIT B

Columbia Legal Services
Institutions Project
101 Yesler Way, Suite 300
Seattle, WA 98104
(206) 464-0838

1 order to avoid further expense, delay, and the risk of litigation, Plaintiffs and Defendants now
2 desire to enter into a comprehensive settlement of all claims arising out of the suit.

3 This Settlement Agreement and Consent Decree (“Settlement”) shall not be construed as
4 an admission by any party regarding liability or the violation of any state or federal law by
5 Defendants. Liability or any duty giving rise to liability is expressly denied. The parties agree
6 that this Settlement is in the best interest of the classes.

7 **I. DEFINITIONS**

8 A. “Agreement” means this Settlement Agreement and Consent Decree.

9 B. “Certificated instructional staff” shall mean “certificated employees” as defined in
10 RCW 28A.150.060 (2009).

12 C. “Court” means the United States District Court for the Western District of
13 Washington at Tacoma.

14 D. “Day” shall mean a calendar day unless otherwise specified.

16 E. “Defendants” means the following Defendants to the above entitled action: Pierce
17 County, a political sub-division in the State of Washington; Tacoma Public Schools, a.k.a.
18 Tacoma School District No. 10; and Superintendent of Public Instruction Randy Dorn, in his
19 official capacity.

20 F. “Eligible detainees” shall mean Pierce County Jail detainees that are eligible for
21 participation in the Program because they have not graduated from high school and are under
22 eighteen on their first day of confinement to the Jail and the first day of the school year as
23 defined below. For purposes of this Agreement, individuals who have not graduated from high
24 school and are under eighteen on their first day of confinement at Remann Hall and who are
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1 transferred to the Jail from Remann Hall are eligible for participation in the Program for the
2 remainder of the school year in which they transfer. For purposes of this Agreement, those
3 individuals sent to Western State Hospital or other mental health or medical facility for
4 evaluation or other purpose while incarcerated at the Pierce County Jail are not included as
5 eligible detainees while they are housed at Western State Hospital, but are eligible upon their
6 return to the Jail if they were otherwise eligible prior to their transfer.

7 G. "IEP" means an Individualized Education Program as described by the federal
8 Individuals with Disabilities Education Act (IDEA).

9 H. "Jail" means the Pierce County Jail, or any jail under the jurisdiction of Pierce
10 County where both adults and youth under the age of eighteen are detained. Nothing included in
11 this Agreement shall apply to juveniles housed at Remann Hall.

12 I. "Parent Class" and "Parents" means the parents and/or guardians of all
13 individuals under 18 years of age who are members of the "Youth Class" as defined herein.

14 J. "Participant" means a member of the Youth Class enrolled in the education
15 program to be implemented by Defendants pursuant to this Agreement.

16 K. "Parties" means Plaintiffs and Defendants.

17 L. "Pierce County" or "the County" means Defendant Pierce County, a political sub-
18 division in the State of Washington.

19 M. "Plaintiffs" or "Classes" mean all members of the Youth Class and Parent Class.

20 N. "Program" means the educational program to be implemented by Defendants
21 pursuant to this Agreement.

1 O. “Program Staff” means an employee or contractor of the Tacoma School District
2 assigned to work with Participants.

3 P. “School day” means a weekday that is neither a weekend nor a school holiday as
4 defined by RCW § 28A.150.050, and consistent with RCW § 28A.150.030 and the school
5 instructional calendar for the Tacoma School District’s regular school year.

6 Q. “School year” shall encompass the regular school days set by the Tacoma School
7 District for the instruction of students.

8 R. “Segregation” means any form of confinement by which a member of the Youth
9 Class is housed in a higher security level than the general classification level within the Jail.
10 Segregation includes, but is not limited to: solitary confinement, administrative segregation,
11 disciplinary segregation, protective custody, and intensive management unit settings.

12 S. “Superintendent” means the Defendant Superintendent of Public Instruction
13 Randy Dorn in his official capacity.

14 T. “Tacoma Public Schools,” or “the Tacoma School District,” or “the District”
15 means Defendant Tacoma Public Schools.

16 U. “Youth Class” shall mean all present and future Pierce County Jail detainees who
17 have not graduated from high school and who are under eighteen on their first day of
18 confinement to the Jail and the first day of the Tacoma School District school year, or who have
19 transferred to the Jail from Remann Hall as set forth in paragraph 1.F. Except where otherwise
20 explicitly stated, none of the obligations herein shall be interpreted to create any educational
21 obligations for ineligible individuals age 18 or older.

1 **II. GENERAL OBLIGATIONS**

2 The District and the County shall implement an educational program at the Jail that
3 satisfies legal requirements for providing educational services to the Youth Class. Unless
4 otherwise explicitly stated herein, this agreement does not expand or reduce any education rights
5 of Jail detainees over the age of eighteen.

6 **A. Provision of Education Services**

7 The program shall be conducted in accordance with Chapter 28A.150 RCW, unless
8 otherwise authorized by state statute, the alternative learning experience requirements of WAC §
9 392-121-182, or an alternative education program authorized by law.

11 **B. School Year**

12 Each program school year shall commence and operate consistent with the District's
13 regular school instructional calendar or as otherwise authorized by RCW 28A.150.290(2) and
14 chapter 392-129 WAC. Members of the Youth Class shall be permitted to participate in the
15 program throughout the school year.

17 **C. Intake, Enrollment, and Transfer**

18 1. Pierce County shall inform Program Staff of a potential eligible detainee within
19 48 hours of the eligible participant being booked into the Jail. Where obtained during intake,
20 such notification to Program Staff shall include name, date of birth, home address, and
21 parent/guardian contact information.

22 2. Within three school days of being informed by the County of a potential eligible
23 detainee pursuant to paragraphs 1 and/or 5 of this section, Program Staff shall meet with and

1 inquire of an eligible detainee whether the detainee would like to enroll in the Program. Where
2 an eligible detainee is admitted to the Jail outside of the regular School Year, the meeting must
3 occur within three school days of the first day of the School Year.

4 3. If the eligible detainee authorizes his or her enrollment in the Program, within two
5 school days of such grant of authorization, Program Staff shall conduct an initial assessment of
6 the Participant to determine appropriate instructional strategies for implementation of a student
7 learning plan.

8 4. Within two school days of providing the initial assessment, Program Staff shall
9 begin providing educational services to the detainee.

10 5. If an eligible detainee initially refuses to participate in the Program and later
11 decides he or she would like to participate, and, if he or she expresses such intent in writing or
12 via "kite," the detainee shall be permitted to participate if he or she is still eligible. Within 48
13 hours of receiving such a request, Jail staff shall convey the request to the Program Staff
14 member(s) designated by the District to receive such notices.

15 6. Within four school days of an eligible detainee authorizing his or her enrollment
16 in the Program, and once provided with necessary contact information, the District shall request
17 the educational records of eligible detainees.

18 7. If a Participant expresses a desire to withdraw from the Program, the following
19 steps must be taken: (a) a written withdrawal of services sheet must be signed by both the
20 Participant and the Program Staff, noting date, time, reason for withdrawal, and advisement that
21 the eligible detainee may re-enroll at anytime he or she remains eligible and directions on how to
22 do so, (b) if the student is not yet 18 years of age, the District shall notify the parents of the
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1 Participant's withdrawal from the program by mailing a notification to their last known mailing
2 address if available, and (c) Pierce County jail shall make an entry into the jail behavioral log of
3 the date of withdrawal. Detainees shall not be subject to institutional discipline for withdrawing
4 or otherwise failing to participate in an educational program.

5 8. In the event that a Participant fails to participate in the Program for reasons other
6 than illness, attendance in court, meeting with a lawyer, case worker, counselor, physician,
7 dentist, nurse, or other professional service provider, or an absence otherwise excused pursuant
8 to the District's attendances and absences policy for a period of ten consecutive school days,
9 he/she shall be deemed to have withdrawn from the Program.

10 9. The Participant and the Participants' parent shall be provided with written notice
11 of the Participants' withdrawal from the program. The notice shall inform the Participant that he
12 or she may resume educational services if he or she is still eligible by submitting a written
13 request or "kite."

14 10. When known by the Jail, it shall notify the District two weeks prior to the release
15 or transfer of any Participants from the Jail. If not possible, notification shall be given at the
16 earliest possible time.

17 11. When offered participation in the program, eligible detainees shall be provided
18 with the Notice of Education Rights for Youth attached hereto as Exhibit 1 and the most current
19 version of the Student Rights, Responsibilities & Regulations handout provide to Tacoma Public
20 Schools students (the 2008-09 version is attached hereto as Exhibit 2). The District shall also
21 mail to the parents of eligible detainees a copy of the Notice of Education Rights for Parents and
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1 Guardians attached hereto as Exhibit 3 and a copy of the Student Rights, Responsibilities &
2 Regulations handout.

3 **D. Written Learning Plan**

4 1. Within ten school days of the date the initial assessment is provided pursuant to
5 paragraph II.C.3, Program Staff shall develop and implement a written learning plan for the
6 Participant in accordance with the requirements of WAC § 392-121-182, or an alternative
7 education program authorized by law.

8 2. The plan must be individually tailored to the specific educational needs of the
9 participant.

10 3. The District shall provide each participant, and the parent(s) of each participant,
11 with an opportunity to have input regarding the design of the plan, provided, however, plans may
12 be implemented in the absence of parental input.

13 4. The plan must include a description of the specific learning goals and
14 performance objectives of the learning experience that will meet the requirements of Section
15 II.G. The description shall clearly identify the requirements a student must meet to successfully
16 complete the course or program in sufficient detail to guide and advise the student.

17 5. The plan must identify the instructional materials essential to successful
18 completion of the learning plan.

19 6. The plan must include a description of the timelines and methods for evaluating
20 student progress toward the learning goals and performance objectives specified in the learning
21 plan.

1 7. Students that are eligible for special education must be provided with written
2 learning plans that are consistent with their IEPs and that comply with the requirements of the
3 federal Individuals with Disabilities Education Act (“IDEA”), Section 504 of the Rehabilitation
4 Act, the Washington State Special Education Act, and all other special education requirements
5 under federal and state program authorized by law. Nothing in this Settlement Agreement or
6 related provisions is intended, however, to supersede or supplant the remedies provided for in the
7 IDEA and other applicable state and federal laws regarding the education of students with
8 disabilities. The parties agree that, absent a systemic failure by the parties to identify, support,
9 or deliver special education services, modifications or accommodations to students with
10 disabilities as required under those laws, Participants must exhaust their administrative remedies
11 under such laws, to the extent required under the law, before bringing any enforcement action
12 pursuant to this settlement, pertaining to a violation of their rights to special education services.
13 Nothing in this agreement is intended to prevent students with disabilities from bringing an
14 enforcement action under this agreement for claims not related to their status of having a
15 disability.

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18 **E. Program Staffing**

19 1. Staffing of the program will be sufficient to fulfill the requirements of this
20 Agreement, including appropriately certificated instructional staff. The School District shall
21 provide other specialized certified instructors and educational staff associates (e.g., speech
22 pathologists, occupational therapists, audiologists, nurses, psychologists, etc.) as appropriate
23 according to each Participant’s Individualized Education Plan (IEP), where applicable.

1 2. Participants shall have direct, one-on-one personal contact with program
2 instructional staff for an average of one hour per week. Only a half-hour per week of one-on-one
3 personal contact with instructional staff shall be required for Participants that receive at least one
4 hour per week of group contact time with instructional staff. Group instruction is limited to four
5 or fewer Participants and is not required under this agreement.

6 3. Participants shall be permitted to contact the Program Staff in writing (e.g., via a
7 kite) with issues or questions concerning the Program.

9 **F. Program Offerings**

10 1. The courses provided to Participants of the program shall be courses in the subject
11 matters identified for inclusion in the common school curriculum by the Washington State
12 Legislature and the Superintendent of Public Instruction including those subjects identified in
13 RCW §§ 28A.230.020, .050, .070 and WAC §§ 392-410-115, -120, -135 that will allow each
14 Participant to earn credits toward the District's graduation requirements and satisfy the
15 requirements for an Alternative Learning Experience course of study under WAC 392-121-182,
16 or an alternative education program authorized by law. Provided, where the Participant is not
17 making sufficient educational progress and the student is not able to perform high school level
18 work, consistent with the student learning plan, the District may offer a remedial course at a level
19 appropriate to ensure educational progress, even if such course does not carry high school credit.

21 2. If it is determined that to fulfill graduation requirements a particular Participant
22 needs a specific type of credit that may create a safety or security issue in the Jail, where feasible
23 Program Staff and the District, in consultation with Jail staff, shall provide the Participant an
24 alternate course of instruction that is practical and appropriate for the Jail population and that

1 will satisfy graduation requirements. Within five school days of determining that it is not
2 feasible to provide such an alternate course of instruction or seek a viable alternative to securing
3 the credit necessary for graduation, the District will notify the parties. Within five school days of
4 such notification, the parties will meet and confer in good faith to determine the appropriate
5 action to take with respect to the Participant's educational services. If the parties are not able to
6 resolve the matter by meeting and conferring in good faith, any party may file a motion with the
7 Court seeking relief based under the Washington State Constitution and/or Chapter 28A.150
8 RCW or other applicable state statute. Where an alternate course of instruction is provided under
9 this paragraph, Program Staff shall document the reasons for providing the alternate course.
10

11 3. The Program shall utilize curricula, course content, instructional materials and
12 other learning resources as authorized by law.

13 4. Eligible Participants shall receive an educational program that shall include all
14 elements necessary to ensure compliance with federal and state requirements regarding education
15 of Participants with disabilities including, but not limited to, those eligible for services under the
16 Federal Individuals with Disabilities Education Act and Section 504 of the Rehabilitation Act.
17

18 **G. Fulfillment of Graduation Requirements**

19 1. The Program shall provide sufficient opportunity for Participants to pursue full or
20 partial credit which will count toward high school graduation requirements in the Tacoma School
21 District.

22 2. The Program shall provide an opportunity for Participants to earn a minimum of
23 six "high school credits" (as the term is defined in WAC § 180-51-050) per school year that are
24 generally applicable toward fulfilling the Participants' graduation requirements in the Tacoma
25

School District. Whether, and the extent to which, a Participant earns credits is dependent on the Participant's progress and participation does not guarantee any Participant receives high school credit. An individual Participant's educational program will include provision of class and credit type necessary for graduation, subject to paragraph II.F.2, but does not guarantee provision of any specific class.

3. The Program shall allow for partial credit retrieval. Subject to those limitations articulated in this Agreement, the Program shall provide sufficient opportunity to complete other requirements for graduation.

H. Accessibility and Special Education

The program shall be accessible to all eligible Participants, including those with disabilities, and shall be administered and provide special education services, program modifications and accommodations in accordance with the federal Individuals with Disabilities Education Act ("IDEA"), Section 504 of the Rehabilitation Act, and other applicable state and federal laws regarding the rights of students with disabilities to receive a public education.

Nothing in this Settlement Agreement or related provisions is intended, however, to supersede or supplant the remedies provided for in the IDEA and other applicable state and federal laws regarding the education of students with disabilities. The parties agree that, absent a systemic failure by the parties to identify, support, deliver special education services, modifications or accommodations to students with disabilities as required under those laws, Participants must exhaust their administrative remedies under such laws, to the extent required under the law, before bringing any enforcement action pursuant to this settlement pertaining to a violation of their rights to special education services. Nothing in this agreement is intended to prevent

1 students with disabilities from bringing enforcement action under this agreement for claims not
2 related to their status of having a disability.

3 **I. Parental Involvement**

4 1. Parent(s) of Participants who are under the age of 18 shall have the right to
5 provide input in developing the written learning plan and shall have a right to review all
6 education records of the Participant in accordance with the requirements of RCW § 28A.605.030
7 and its supporting regulations. The failure of a Participant's parent(s) to assist in developing the
8 written learning plan or to otherwise become involved in the Participant's education under the
9 program shall not preclude the Participant from enrollment in the Program or implementation of
10 the learning plan.

12 2. Defendants shall also comply with federal and state law governing special
13 education requirements regarding involvement of parents of Participants with special education
14 needs, including participation in IEP meetings.

16 **J. Evaluation and Progress Review**

17 1. Each Participant's educational progress shall be reviewed at least monthly by the
18 Program Staff and the results of each review shall be communicated to the Participant. When
19 requested by the Participant's parent(s), Program Staff shall update the Participant's parent(s)
20 regarding the Participant's progress each time the Participant earns a credit. The information
21 provided to the Participant and the Participant's parent(s) shall include a description of the
22 Participant's progress toward meeting graduation requirements.

1 2. If the Participant fails to make satisfactory progress for two consecutive
2 evaluation periods or if the Participant fails to follow the written learning plan, an intervention
3 plan designed to improve Participant progress shall be developed and implemented. This
4 intervention plan shall be developed by instructional staff in conjunction with the Participant. If,
5 after no more than two subsequent evaluation periods, the Participant still is not making
6 satisfactory progress, a plan designed to more appropriately meet the Participant's educational
7 needs shall be developed and implemented by Program Staff in conjunction with the Participant.

8 3. Participants shall be assessed using District-wide recurring assessments used by
9 the District, consistent with state requirements or guidelines for assessments.

10 4. Evaluations and assessments for Participants with special education needs shall
11 conform to the requirements of federal and state laws regarding special education.

13 **K. School Discipline**

14 A Participant, including Participants placed in Segregation, shall be expected to comply
15 with all student rules and conduct code provisions of the District, a copy of which shall be
16 provided to them. They shall be subject to discipline consistent with applicable statutes,
17 regulations and District policies.

19 **L. Institutional Discipline**

20 1. Participants shall not be deprived of participation in the Program as a result of
21 discipline taken by the Pierce County Jail unless it occurs during, or is related to, the Program.

22 2. Institutional discipline shall not result in the loss of participation in the Program.
23 Where Participants are placed in Segregation or any other special housing unit, or where there is

1 some other emergent situation involving or affecting the Participants, Participants shall be
2 permitted to continue their participation in the program to the extent continuation is feasible.

3 **M. Maintenance and Release of Participant Records**

4 1. Maintenance of student records shall be in accordance with the Office of
5 Secretary of State's Local Government Records and Retention Schedule for School Districts.
6 Participant files shall be maintained at the jail to the extent necessary to implement the education
7 program, Participants' written learning plans, and Participants' IEPs, and shall include but not be
8 limited to current transcripts, IEPs, behavioral intervention plans, functional behavioral
9 assessments, and current evaluations. These files shall be accessible by the Program Staff.

10 2. Access to and release of a Participant's educational records shall be in accordance
11 with the Family Educational Rights and Privacy Act (FERPA) and other applicable federal and
12 state laws pertaining to student and public records. After a Participant is released from the Jail,
13 upon receipt of a request for the Participant's educational records, the District shall transmit the
14 records as requested in accordance with the requirements of RCW § 28A.225.330.

15 **N. Educational Materials and Facility Conditions**

16 1. The District shall provide Participants with all educational materials and supplies
17 (e.g., books, workbooks, writing implements, paper, tests, rulers, calculators, computers, etc.),
18 and access to such materials and supplies, necessary to ensure that Participants can fully
19 participate in the program and fulfill the requirements of their written learning plan with regard
20 to jail security considerations. The materials and supplies shall, at minimum, be consistent in
21 quality with those available to the District's overall student population.

1 2. Pierce County shall ensure that the jail facilities that are used for the program are
2 adequately maintained and sufficient to allow the program requirements of this Agreement to be
3 met. The School District and Pierce County shall also ensure that Participants are provided with
4 an adequate opportunity to fulfill the requirements of their written learning plan and other
5 applicable program requirements. This shall include allowing a Participant an average of five
6 hours per school day for independent study, receipt of instruction, or other course work, except
7 where doing so is not practicable in light of the Participant's illness, attendance in court, meeting
8 with a lawyer, case worker, counselor, physician, dentist, nurse, or other professional service
9 provider, or an absence otherwise excused pursuant to the District's attendances and absences
10 policy, or other exigent circumstances.
11

12 3. Pierce County shall provide and maintain a clean and appropriate classroom
13 environment sufficient to meet the program requirements. The County shall provide Participants
14 with access to classroom space as necessary to fulfill the requirements of this Agreement and to
15 fulfill the Participants' written learning plans consistent with security considerations.
16

17 4. Pierce County shall also provide and maintain furnished office space for Program
18 Staff, which must include a telephone and access for long distance calls, a lockable file cabinet,
19 access to a copy machine, access to a fax machine, and access to the Internet sufficient to access
20 the District's network.
21

22 **O. Office of Superintendent of Public Instruction Oversight**

23 1. During the term of this Agreement, Defendant Superintendent of Public
24 Instruction shall supervise the provision of educational services at the Jail in accordance with
25 relevant federal and state law.
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1 2. In addition, the Superintendent shall make a good faith effort to identify funding
2 sources for the provision of the program, including consideration of additional funds, such as
3 funds for institutional education.

4 **III. MONITORING**

5 **A. Selection**

6 The parties have agreed that Michael S. Blair shall serve as a Settlement Monitor who
7 will monitor this Agreement as set forth below.

8 **B. Duties**

9 1. During the first four full semesters during the term of this agreement, there will
10 be monitoring of the program. During this time period, the monitor shall be required to do the
11 following:

12 a. Conduct two reviews (the first to occur during the first two months of each
13 semester and the second before each semester ends unless otherwise noted) to include the
14 following:

15 i. On site visitation of the jail education program with reasonable notice to
16 the Defendants or their designee (minimum 5 school days in advance);
17 ii. During each visit, the monitor will interview at least 4 program
18 participants (if such participants are available and consent to be
19 interviewed) and review the records of each student interviewed that the
20 monitor deems are relevant to compliance with the provisions of the
21 settlement;

- iii. Over the course of the semester reviews, interview at least 3 parents/guardians (if consenting parents are available) (these interviews can be conducted by phone);
- iv. Over the course of the semester reviews, interview at least 2 eligible detainees who refused enrollment in the program (if such detainees are available and consent to be interviewed);
- v. Within 15 days of each review, the monitor shall submit a verification letter to all parties confirming the visit and flagging any issues raised during the course of the limited review so that the parties can address them instead of waiting until the end of the semester. Should issues arise outside of the timeframe for the visits (e.g., during a parent interview), the monitor will give the parties written notice of the issue within 15 days. If at all possible, the monitor shall also immediately provide an oral report to the school staff and jail staff of any issue that might be included in any forthcoming verification letter;
- vi. During the course of the visits, the parties shall provide the monitor access to program faculty and records as the monitor requests and shall allow the monitor to observe classes. It is expressly agreed that the monitor shall not disrupt the provision of educational services in the execution of his or her duties. Minor interruptions are not considered a disruption; and
- vii. To facilitate the monitor's review, the School District and County shall maintain at all times during the monitoring phase an accurate written log

1 of inmate contacts regarding enrollment, assessment, and class-time
2 services. This will be provided for the monitor's review during each
3 visitation and, if feasible, in advance of the review.

4 b. Conduct a full end-of-the-semester review of the program status in
5 writing. This will include a review of all program records relevant to compliance with
6 the provisions of the settlement, except with respect to the following requirements of the
7 settlement for which appropriate Defendants may self-certify regarding their compliance
8 or non-compliance: whether the school year is consistent with the District regular school
9 instructional calendar (see Section II.B); whether detainees who are eligible for the
10 program at the beginning of the school year are permitted to participate the entire year
11 (see Section II.B); whether school records were requested within four school days of an
12 eligible detainee authorizing enrollment and providing necessary contact information;
13 whether notification was provided to the District two weeks prior to the release or
14 transfer of any participants from the Jail or at the earliest possible time (see Section
15 II.C.10); whether courses provided to Participants are in the subject matters identified in
16 the common school curriculum by the Legislature and Superintendent of Public
17 Instruction and allow the earning of credits toward District graduation requirements and
18 the applicable Alternative Learning Experience course of study (see Section II.F.1);
19 whether appropriate Defendants are in compliance with II.F.2; whether any eligible
20 detainees were precluded from participation in the program because of the failure of the
21 detainee's parent to assist in developing the written learning plan or otherwise become
22 involved in the detainee's education (see Section II.I.1); and whether any detainees have
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been subjected to institutional discipline for failing to participate in the program (see Section II.C.7). If a Defendant(s) certifies that non-compliance with this Agreement has occurred, the Defendant(s) shall provide the monitor and counsel for Plaintiffs all documents relevant to the non-compliance. The Monitor may also do further investigation into the non-compliance. During the end-of-semester review, the monitor may conduct supplemental interviews. If the monitor deems it necessary, he or she may investigate any issues that arise during the end-of-semester review or that arose in the two prior reviews during that particular semester. The monitor shall then submit a report to the parties within 30 days of the end of each semester.

2. After the first four full semesters of monitoring, in the fourth semester report, the monitor shall certify whether or not the Defendants have substantially complied with the terms of this Agreement. If the monitor certifies that Defendants have not substantially complied with the terms of the Agreement, monitoring shall continue in the same manner for two additional semesters. If the monitor certifies that Defendants have substantially complied with the terms of the Agreement, monitoring shall continue for two semesters during which time the monitor need not conduct the reviews set forth in Section III.B.1.a.

C. Access to Information

1. To the extent necessary to perform the duties described above, the Monitor shall have full and complete access to Defendants' records and staff, and Pierce County jail facilities and eligible detainees. Defendants shall direct all employees to cooperate fully with the Monitor.

2. Upon the Monitor's request, Pierce County shall provide the Monitor with a list of all eligible detainees then being held at the Jail.

1 3. Upon request of Plaintiffs' Counsel, Pierce County shall provide Plaintiffs'
2 Counsel with a list of all eligible detainees then being held at the Jail and shall allow Plaintiffs'
3 Counsel access to the eligible detainees.

4 4. Throughout the duration of the settlement agreement, the parties shall provide all
5 complaints received regarding the provision of educational services at the jail to the monitor for
6 review and to counsel for all parties. This includes, but is not limited to kites, grievances, and
7 written statements.

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9 **D. Payment**

10 Defendants shall pay the Monitor's reasonable fees and actual expenses incurred for
11 performing the duties as outlined in this Agreement.

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13 **E. Removal and Replacement of the Monitor**

14 The Monitor shall not be removed unless: (i) the Monitor resigns, (ii) the parties stipulate
15 and agree in writing that the Monitor should be removed, or (iii) the Court determines that there
16 is good cause. In the event the Monitor resigns or is otherwise removed under this paragraph
17 before the expiration of the term of this Agreement, or in the event that Mr. Blair is not able to
18 fill out the term of his service as monitor, he shall provide written notice to the parties' counsel
19 as soon as feasible. The parties shall exchange the names of new proposed monitors no later
20 than ten business days after all counsel are in receipt of that notice, or equivalent notice of his
21 incapacity to serve in the event Mr. Blair is incapable of providing notice. Within five business
22 days of this exchange, the parties shall meet and confer regarding agreed substitution for the
23 remaining term of monitoring. If the parties are unable to identify a mutually agreeable monitor

1 within ten business days of their meeting, then the matter shall be jointly brought before the
2 Court for consideration. Each party shall submit to the Court names and CVs of at least two
3 potential monitors. Any proposed monitor under this provision should possess similar work
4 experience to that of current monitor Mike Blair in the fields of education administration and
5 assessment of learning programs, and a background that demonstrates that the proposed monitor
6 will be able to act independently of, and without bias toward, any of the parties.

7 **IV. ENFORCEMENT**

8 **A. Dispute Resolution**

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10 In the event the parties disagree over Defendants' performance of their obligations under
11 this Agreement, the parties shall first meet and confer in good faith in order to attempt to resolve
12 the disagreement without court intervention. If the parties are not able to resolve the matter by
13 meeting and conferring in good faith, any party may proceed to request Court enforcement or
14 other relief.

15 **B. Attorneys' Fees and Costs**

16
17 The parties shall bear their own costs and attorneys' fees for this action, except that if
18 Plaintiffs prevail in an action seeking to enforce the terms of this Agreement, the Court shall
19 order one or more of the Defendants to pay reasonable attorneys' fees and costs of the
20 enforcement action.

21 **V. IMPLEMENTATION OF AGREEMENT**

22
23 Defendants shall come into full compliance with the terms of this Agreement within two
24 months of its approval by the Court.

1 **VI. MODIFICATION AND TERMINATION OF AGREEMENT**

2 **A. Term of Agreement**

3 The settlement agreement will remain in effect for six full semesters plus 90 days, and
4 Defendants shall comply with all applicable provisions. Plaintiffs may, however, move the court
5 for an extension of the settlement with either full or reduced monitoring for a period no longer
6 than two additional semesters. The court will grant the motion only upon a showing that there is
7 a reasonable expectation that Defendants will materially deviate from the educational program
8 required by the settlement agreement. There will be no extension of the settlement agreement in
9 any event beyond eight full semesters from the date of its commencement.

10 **B. Modification**

11 This Agreement may only be amended or modified by order of the Court pursuant to
12 FRCP 23.

13 **VII. EXECUTION IN COUNTERPARTS**

14 This Agreement may be executed by the Parties in one or more counterparts, transmitted
15 by electronic or regular mail, each of which shall be deemed an original but all of which together
16 shall constitute one and the same instrument.

17 DATED this 26th day of March, 2010.

18 
19

20 ROBERT J. BRYAN
21 United States District Judge
22

The undersigned have agreed to the provisions forth above and to the entry of this Settlement Agreement and Consent Decree.

DATED: February 5, 2010

DATED: February 5, 2010

s/ Gavin Thornton

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Beth Colgan, WSBA #30520
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Seattle, WA 98104
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s/ Michelle Luna-Green

Attorneys for Plaintiffs

Attorney for Defendant Pierce County

DATED: February 5, 2010

DATED: February 5, 2010

s/ Charles P.E. Leitch

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s/ Dierk Jon Meierbach tol

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Attorney for Defendant Randy Dorn

Attorneys for Defendant Tacoma School
District No. 10

1 Dated: 2/2/10

S /
J.W.

3 Dated: _____

S /
4 SALVADOR MUNGIA, guardian ad litem for J.W.

5 Dated: 2/2/10

S /
6 S.R.

7 Dated: 2/2/10

S /
8 SAMUELU REUPENA

9 Dated: 2/2/10

S /
10 TAFAOGA REUPENA

11 Dated: 2/5/10

S /
12 PIERCE COUNTY
By Paul Pastor, Sheriff
Pierce County Sheriff's Department

13 Dated: 2/4/10

14 TACOMA PUBLIC SCHOOLS, a.k.a. Tacoma
15 School District No. 10

16 By: s /

17 Printed Name: Arthur Jarvis

18 Title :Supt.

22 Dated: 2/3/10

S /
23 RANDY DORN, Superintendent of Public
24 Instruction, in his official capacity